



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: JAPANTOWN TERM SHEET

DATE: February 12, 2013

Approved

Date

2/14/13

COUNCIL DISTRICT: 3

RECOMMENDATION

Adopt a resolution to approve the parameters of a non-binding Term Sheet presented by Williams/Dame Associates for the purchase of the City's former Corporation Yard, and direct staff to continue non-binding and non-exclusive discussions with the developer for the purposes of preparing a Purchase and Sale Agreement for City Council's consideration.

OUTCOME

The subject property is in Japantown and is bounded by Sixth, Seventh, Jackson and Taylor Streets.

Williams/Dame is a well respected developer with a track record for developing high quality mixed use projects that enhance neighborhoods. Approval of the parameters of the Term Sheet would allow the developer to secure a financial partner to underwrite the project. Approval would also initiate the joint work of the developer and the City team to refine anticipated development costs and the price and other conditions for sale of the property, without presently obligating the City in any manner with respect to the sale of the property.

It is anticipated that discussions could result in a Purchase and Sale Agreement to be presented for Council review, in six to eight months. The approval of such a Purchase and Sale Agreement and sale of the property thereunder would be accomplished pursuant to authority provided by San Jose Municipal Code Section 4.20.100, which allows the negotiated sale of property for economic development purposes.

BACKGROUND

In June 2004, the Mayor and City Council directed the City Manager and Redevelopment Executive Director to develop a strategy and timeline to relocate the Japantown Corporation

Yard. In November 2005, the City Council awarded a \$28.8 million design/build contract to relocate facilities to the Central Service Yard. In January 2006, the City Council/Redevelopment Agency Board approved an Exclusive Negotiations Agreement with Olson Urban Housing to develop the Corporation Yard as a residential mixed use project. In September of 2006 the City Council accepted a report developed in conjunction with the Japantown Community Congress outlining priorities intended to guide future development of the Corporation Yard site. The priorities included:

- The Corporation Yard should be a catalyst to revitalize Japantown with retail, urban plaza, performance space, and a strong historical connection
- Secure a Japantown home for Taiko
- Establish a senior wellness and youth center at the Boys and Girls Club site
- Develop and implement a comprehensive Japantown Retail Strategy
- Develop and implement a Parking Strategy
- Historical and Cultural Preservation
- Revisit the Jackson Taylor Strategy

In October 2006, Olsen declined to move forward with the project. In February 2007, Williams/Dame was selected to develop the property. In January 2008, Williams/Dane determined they could not proceed with the project due to the global economic crisis. Staff and the community participated in over 100 community meetings during the 2006-2008 time period while the project was under discussion, first with Olsen then with Williams/Dame.

The debt services associated with construction and build-out of the Central Service Yard and the move from the old Main Yard to the Central Service Yard are budgeted in the Service Yards Construction & Conveyance Tax (Service Yards C&C) Fund as Phase I and Phase II debt service payments. For Phase I, the initial purchase of the site and construction of the new Central Service Yard, the City issued bonds in the amount of \$24.9 million in 1993 that have an outstanding balance of approximately \$14.5 million. Due to the limited funding available in the Service Yards C&C Fund, the General Fund has subsidized the debt service during this period. In 2012-2013 the General Fund provided a \$1.3 million subsidy toward the \$1.7 million annual debt service payment. As outlined in the 2013-2017 Adopted Capital Improvement Program, for 2013-2014, the General Fund is projected to subsidize the full debt service amount of \$1.67 million. It should be noted, however, as part of the approval of the 2012-2013 Mid-Year Budget Review, due to higher than estimated Construction and Conveyance Tax receipts, the City Council set aside the additional tax revenue in the amount of \$790,000 to establish a Reserve for Debt Service Payments.

Phase II, the move from the Main Yard and expansion of the Central Service Yard, totaled \$32.2 million and was facilitated by the issuance of commercial paper. As part of the 2013-2017 Capital Improvement Program, the City assumed a potential sale of the old Main Yard site in 2014-2015 for \$14 million and the City has been paying interest-only payments on the outstanding \$23.1 million in Phase II commercial paper debt. Sale proceeds for the Main Yard

would pay down the existing Phase II debt, with the remaining commercial paper debt restructured into fixed bonds with an estimated annual payment of \$750,000.

ANALYSIS

Development of the Japantown Corporation Yard site is key to the economic vitality of Japantown. The vacant site poses a drain on the adjacent neighborhood commercial district and depresses nearby residential property values. Mixed-use development of the site has been contemplated since 2006. The Redevelopment Agency Board and City Council have approved project proposals including retail, community amenity space and housing since 2006. Development of the site will bring 600-700 new residents and customers to the neighborhood business district.

San Jose's Japantown is one of the three remaining Japantowns in California. Corporation Yard development will create the "capstone" for Japantown and enhance the regional draw and attraction of the area. Also contributing to the regional appeal of the project is the proposed Center for the Creative Arts (CCA). The project is intended to be the permanent home of Taiko and CreaTV. The conceptual development includes an outdoor amphitheater and plaza that will host performances, events, and the Farmers Market, making Japantown a stronger destination.

The Japantown Corporation Yard site, although in a former Redevelopment Agency area, is not in an area which collected tax increment. The full project is estimated to be valued between \$150 and \$180 million, and is anticipated to generate between \$170,000 and \$205,000 in property taxes a year. The retail component may have between 6,000 to 12,000 square feet of retail. The project will consist of approximately 600 rental housing units that will bring 600-700 new residents. The new residents will increase and expand retail and service demand in Japantown.

In the last 12-18 months, the economy in San Jose/Silicon Valley has strengthened regional job growth and has spurred the apartment home market. It was the strengthening of the apartment market and Council direction to sell surplus property that encouraged staff to reach out to Williams/Dame to determine the firm's interest in re-engaging in the Japantown project. Williams/Dame indicated their interest quickly. Williams/Dame was originally selected through a public process that included extensive outreach with the Japantown community as well as work with both the City and Redevelopment Agency staff.

Project Description

Williams/Dame developed the new proposal for Japantown on the principles and concepts previously envisioned by the community, but there are important differences. The buildings themselves will be designed to complement the neighborhood. The project will be easily accessible to area residents and visitors. The unit count for the project remains the same (approximately 600 units are planned), but the housing units are smaller. San Jose has a

relatively high average apartment unit size, approximately 1,400 square feet. Williams/Dame believes there is an opportunity to fill a gap in the local housing market to create smaller, more affordable units that provide desirable places for young professionals, seniors, singles, and empty-nesters. Less parking is required with the smaller units. To support use of transportation alternatives, Williams/Dame will explore providing eco passes and zip cars.

The project will include retail. The mix and amount of retail will be determined through market analysis and consultation with likely tenants and community input. The project is conceived to have a well-designed green space that will provide a home for the Farmer's Market and can be used as an outdoor amphitheater in conjunction with the many festivals held in the area.

The project is envisioned to be constructed in two phases.

On January 19, 2013, City staff and Williams/Dame held a community meeting at the Northside Community Center. More than 125 people attended the meeting. Attendees were reintroduced to Williams/Dame and listened to a presentation outlining the current direction of the proposed Corporation Yard project. Attendees divided into groups and shared what they were most excited about and what staff should pay most attention to as the proposal develops. A large number of residents were excited the project could be moving forward again. In general attendees liked the concept of the CCA. The issues of greatest concern related to parking and traffic. Should the proposal be supported by City Council, City staff and Williams/Dame will work closely with the Community to ensure traffic safety and adequate parking.

Creative Center for the Arts (CCA)

One of the original goals for the Japantown project was to secure a home for Taiko. In recent years, Taiko has been working with 1st ACT Silicon Valley and several other arts and cultural organizations to explore ways to support artists, arts organizations and creative entrepreneurs. The concept has evolved into a proposal to develop a place in which artists, creative entrepreneurs, and professionals can work and produce. The development of the CCA would allow artists, cultural groups, related non-profits and creative entrepreneurs to share resources including support staff and office space. The intent is to create a more sustainable financial base from which the creative arts can thrive. As currently planned, the CCA project would include a 50,000 to 60,000 square foot structure. The building would be home to Taiko, CreaTv, and the Arts Council of Silicon Valley. The building would include a minimum of two floors that can be leased to creative professionals as well as providing a home base for other area non-profits. The outdoor amphitheater would allow performance space for Taiko and other groups. The building itself is not planned to include performance space.

The model as currently developed begins with Williams/Dame purchasing the Corporation Yard and giving back to the City .75 acres of land. The City would then enter into a long-term use arrangement with the CCA. CCA would seek grants and other financing in order to construct and fit out the CCA building. The goal is to create a "debt-free" building. Management of the

project would also include earned income from leased space and rental of areas of the building. Williams/Dame identifies the CCA and open space as critical components of the overall project.

Williams/Dame would design the green space and amphitheater as part of their project. Construction of the CCA building will not be linked to development of the Williams/Dame project. Where possible, Williams/Dame will coordinate with CCA to achieve design and building efficiencies. If the CCA does not move forward as contemplated, the City would retain responsibility for the land and staff will present alternative uses for the .75 acres to the City Council. Alternative uses would not necessarily include additional units due to the proposed project density and costs associated with providing additional parking.

Williams/Dame has presented City staff with the non-binding Term Sheet attached to this memorandum. Staff is requesting that the City Council approve the parameters of this Term Sheet. Approval will allow two key activities: First Williams/Dame will secure a financing partner for the project. Second, Council action will allow staff to continue non-binding and non-exclusive discussions with the developer for the purposes of preparing a Purchase and Sale Agreement for Council's consideration. The requested Council action does not involve entering into any agreement or making any other commitment with Williams/Dame.

A summary of key terms of the attached Term Sheet includes:

Land Price

Developer will pay \$24,000,000 for the Property.

Phasing

The Project will occur in two phases. The purchase price for the first phase shall not be less than \$10,300,000. The Phase 2 closing will occur not later than two years after the first closing.

As-Is

The Property will be sold to the Developer on an "as-is" basis.

CCA

The development concept will incorporate into the first phase of the Project the dedication to the City of .75 acres intended to serve community organizations.

Private Development; No Affordable Housing or Public Art Requirements

The Property will be sold at fair market value the Developer, to be developed solely by the Developer. As such, Developer expects that it will be considered a private development and not

subject to prevailing wage requirements. Developer expects that there will be no inclusionary housing or public art requirements.

Development Agreement

Developer understands that, to the extent any of the foregoing requires the granting of vested rights, such as exemption from affordable housing requirements (presently not applicable to rental projects) which may be enacted at a later date, the Project may need to be the subject of a Development Agreement which would require the development of both phases of housing within a specified timeline in order to preserve such vesting (in addition to any other requirements applicable to development agreements).

Other Development Related Costs

Developer understands it must satisfy itself prior to entering into any Purchase and Sale Agreement as to the extent of certain development-related costs, including but not limited to issues such as possible construction-related soils remediation and archeological preservation, any extension of offsite utilities, or review of levels of traffic mitigation fees.

EVALUATION AND FOLLOW-UP

Should the Council approve parameters of the Term-Sheet, staff's goal would be to work with the developer to bring a Purchase and Sale Agreement for Council consideration within six to eight months.

POLICY ALTERNATIVES

Alternative: Not Proceed with Sale and Development at this Time

Pros: The housing market could continue to strengthen and financing of condominium projects financing could be available at a later date, possibly resulting in an even greater sales price for the property.

Cons: Near-term financing of condominium development is not likely.

Reason for not recommending: The City has the opportunity to sell the property in the near-term and generate revenues to reduce a significant amount of outstanding debt on the property.

Development of the property is important for the economic vitality of Japantown.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The proposed project does not meet any of the criterion listed above. However, the memorandum will be posted on the City's web-site for the February 26, 2013 City Council Agenda. Several community meetings have recently taken place on the proposed project. The developer and project staff met individually with at least ten key neighborhood leaders in the Japantown area. On January 19, 2013, a community meeting was held at the North Side Community Center. Over 125 community members attended the meeting.

COORDINATION

The memorandum has been coordinated with the City Manager's Budget Office, Mayor's Budget Office, The City Attorney's Office, and the Housing Department.

FISCAL/POLICY ALIGNMENT

The City Council has directed the Office of Economic Development to sell City property in order to assist with debt reduction and revenue generation for the City. Additionally, the development of quality mixed use environments fulfills the direction provided in City's General Plan.

COST SUMMARY/IMPLICATIONS

As described above, the City had assumed in the approval of the 2013-2017 Adopted Capital Improvement Program that the old Main Yard would be sold for \$14 million in 2014-2015 and any remaining debt would be restructured by utilizing fixed rate bonds in place of commercial paper. As stated in the recommended term sheet, the sale of the old Main Yard would occur in two phases. After paying down commercial paper debt with proceeds from the first phase of the sale, the City would continue paying a reduced interest-only loan until after the second phase of the purchase. With the anticipated proceeds of the second phase of the purchase, the City would be able to pay-off the Phase II commercial paper debt. However, if total sale proceeds fall short

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of the outstanding \$23.1 million in Phase II commercial paper debt, the Service Yards C&C Fund would continue making Phase II debt service payments.

CEQA

Japantown Corporation Yard Redevelopment Project, EIR Resolution No. 74384

/s/

KIM WALES

Director of Economic Development

Chief Strategist

For questions please contact Nanci Klein, Deputy Director, Office of Economic Development at (408) 535-8184.

WILLIAMS/DAME & ASSOCIATES, INC.

February 13, 2013

Via Email and U.S. Mail

Nanci Klein
City of San Jose
Division Manager
200 East Santa Clara Street, 17th Floor
San Jose, CA 95113

RE: Term Sheet for Japantown, San Jose, California

This non-binding Term Sheet provides an outline of the terms and conditions under which Williams / Dame & Associates, Inc., an Oregon corporation ("**Developer**"), or another entity managed by Developer or any affiliate of Developer (collectively, "**Buyer**") is willing to purchase from City of San Jose (the "**City**") the real property commonly referred to as the "Corporation Yard". The Corporation Yard is bounded by 6th, 7th, Jackson and Taylor Streets and is located in San Jose, California (the "**Property**"). The project ("**Project**") to be developed on the Property will incorporate up to 600 apartment units, up to 18,000 square feet of retail, and a public park. The Project will also dedicate .75 acres for the development of community serving space including a permanent home for such community organizations as Taiko and the Creative Center for the Arts.

This Term Sheet is delivered for the sole purpose of City Council's consideration thereof in connection with the Council's decision of whether or not to authorize City staff to undertake further direct negotiations with Developer concerning sale of the Property. Such further negotiations may result in the preparation and execution of a Purchase and Sale Agreement ("PSA") specifying the parties' responsibilities.

By its delivery of this Term Sheet to City for City Council's consideration or approval of the same, Developer understands that, the City is making no commitment or agreement to undertake (a) any disposition of land to Developer; or (b) any other acts requiring the subsequent independent exercise of discretion by the City or their departments. It is further understood that this Term Sheet or City's acceptance, consideration or approval of the same does not imply any obligation on the part of the City to negotiate only with Developer, to negotiate to any given standard or for any given period, or to enter into any agreement that may result from the negotiations contemplated herein, all terms and conditions that may become binding upon the City being subject to the further consideration and approval of City Council in its sole and absolute discretion.

With the understandings that all Project parameters or principles concerning purchased terms set forth in this term sheet are conceptual guidelines only, and that the final components may only be developed during the process of negotiation, it is the present intent of Developer to incorporate the following general terms of this term sheet into a PSA.

1. **Land Price:** Developer will pay \$24,000,000 for the Property (the "**Purchase Price**").

2. Closing: Closing may be phased.

- a. At the first closing, Developer will take down the land area required to support the first phase of development, as mutually agreed. The purchase price shall not be less than \$10,300,000. The first closing will occur on or before the date that the construction loan closes for the Project, or the date that is four (4) months after the expiration of the Contingency Period, whichever occurs first. At the Developer's sole discretion, the Closing Date may be extended by up to 90 days, in 30 day increments. For each 30 day increment, the Developer shall provide an extension payment of \$100,000 which fee will be nonrefundable when made but applicable to the purchase price.
- b. Developer anticipates that the remaining rental units will be developed on the remaining portion of the Property in one (1) additional phase. As such, the closing for the remainder of the Property will occur not later than two years after the first closing; provided, however, that the second closing may be extended up to 90 days on the same basis as extensions of the first closing, as described above. The purchase price for the second phase shall be the difference between \$24,000,000 and the Phase I purchase price.

3. Earnest Money:

- a. Within ten (10) days of mutual execution of the PSA, Developer will deposit earnest money in the amount of \$250,000 in an escrow account at a title company to be selected by the Developer. The earnest money will be nonrefundable (except in the event of a default by the City) at the expiration of the Contingency Period, and applicable to the Land Price paid at the first closing.
- b. The Contingency Period will expire on the earlier of (a) eight (8) calendar months from the execution of the PSA, or (b) 3 business days from the recordation, (or other applicable evidence of approval) of the necessary entitlements required to develop the Property subject to a general design, including site density, retail components, public space and parking, as mutually agreed between City and Developer. Such approval shall contain no extraordinary requirements or conditions, except as determined by Developer in its sole discretion, and shall not be subject to further appeal. The full Contingency Period will be limited to Developer's confirmation of financing and entitlements; Developer will complete all other due diligence related to the purchase within 90 days of execution of the PSA, and shall endeavor to complete as much due diligence as is reasonably possible prior to execution of the PSA.
- c. At the first closing, Developer will deposit an additional \$500,000 in earnest money with escrow, which amount will be nonrefundable when made but applicable to the balance of the Land Price. Neither earnest money deposit will limit City's remedies in the event of Buyer's default.

4. PSA Stipulations:

- a. The Property will be sold to Developer on an "as-is" basis.

- b. Prior to entering into the PSA, the Developer will submit to the City or the City's staff, and/or its consultants (a) a development concept (consisting of a preliminary development program and conceptual land use plan); and (b) a detailed preliminary development proposal (including a financial pro forma and site, massing, and phasing plans, and a description of the anticipated sources of funding for the first phase of the project); and (c) a financing plan.
- c. The development concept will incorporate into the first phase of the Project the dedication to the City of .75 acres intended to serve such community organizations as Taiko and the Creative Center for the Arts and provide a benefit to the public. This dedication of public benefit space would be in addition to any entitlement-related requirements of the Project. The Developer will use best efforts to coordinate with City in its efforts to incorporate the community organizations into the public benefit space in order to achieve efficient development that benefits the overall Project.
- d. During the Contingency Period, in addition to obtaining approval of necessary entitlements, Developer shall develop a program of financing to provide the City with reasonably satisfactory evidence that financing will be available for the acquisition and development of the project. Developer understands that, as a condition to the City's obligation to proceed to closing, the City may require certain assurances that the Project will be developed following transfer of the Property. The Purchase Price assumes a development of up to 600 units and a project return-on-cost of 7.0% which Developer has determined to be the prevailing capital market return requirement for market-rate financing; provided, that Developer's sole remedy in regard to this assumption shall be to terminate the PSA prior to the expiration of the Contingency Period.
- e. Except as may otherwise be agreed between the parties, Developer expressly acknowledges that any and all expenses and costs associated with its performance under the PSA, or any other such agreement, are its sole obligation and responsibility.
- f. The Property will be sold at fair market value to and developed solely by the Developer, or its assigned single purpose entity controlled and managed by Developer. As such, Developer expects that it will be considered a private development, and not a project of the Public or the City, and will not be subject to any prevailing wage requirements or other City procurement rules.
- g. Developer has received from City a letter of "No Further Action" certifying the environmental condition of the Property. Developer shall satisfy itself prior to entering into the PSA as to potential obligations associated with the monitoring, removal or remediation of environmentally contaminated soils or site conditions;
- h. Developer will satisfy itself prior to entering into the PSA as to potential obligations for offsite utilities other than in the right-of-ways adjacent to the site;
- i. Developer will satisfy itself prior to entering into the PSA as to potential obligations in collecting, recovering, preserving and mitigating archeological resources uncovered in the course of developing the Property

- j. Developer will satisfy itself prior to entering into the PSA as to potential obligations for any fees, charges or assessments levied for the undergrounding of power lines around the Property (it is contemplated that PG&E will complete such undergrounding work at its cost);
- k. Developer expects that, to the maximum extent feasible, all Park fees will be spent on Site, which might be used to design and build any public benefit space, and that Developer would have no further financial obligation with respect to any such public benefit space.
- l. Developer expects that, to the extent applicable thereto, the Property would be included in the Downtown High Rise Incentives initiative, including Permit Expediting, reduction in Building and Structure Construction Tax, Commercial-Residential Building Tax, Park Fees, Inclusionary Requirements, Minimum Parking Requirements and all other eligible incentives.
- m. Developer would be responsible for traffic mitigation fees related to the 101/Oakland interchange in an amount up to \$800,000. Developer will satisfy itself prior to entering into PSA as to potential obligations for any other traffic mitigation fees related to the project.
- n. The Developer expects that there will be no inclusionary housing, or public art requirement applicable to the Project.
- o. Developer understands that, to the extent any of the foregoing requires the granting of vested rights (such as, by way of example, exemption from affordable housing requirements which may be enacted at a later date), the Project may need to be the subject of a development agreement which would require the development of both phases of housing within a specified timeline in order to preserve such vesting.

Sincerely,

WILLIAMS/ DAME & ASSOCIATES, INC., an Oregon corporation

By: 
Print Name: T. E. DAME
Its: PRESIDENT

cc: